Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of	)	
	)	
Expanding the Economic and Innovation	)	GN Docket No. 12-268
Opportunities of Spectrum Through	)	
Incentive Auctions	)	

PETITION FOR RECONSIDERATION

Media General, Inc. ("Media General"), by its attorneys and pursuant to Section 1.429 of the Commission's rules, hereby seeks reconsideration of the *Report and Order*, FCC 14-50, issued June 2, 2014 by the Commission in the above-referenced docket.[1] As discussed below, the Commission's refusal to move forward with, and therefore protect, facilities proposed in an isolated number of pending VHF-to-UHF channel substitution petitions is not only inconsistent with the Congressional intent behind the Middle Class Tax Relief and Jobs Creation Act of 2012 ("Spectrum Act") as well as the public interest, but, as established in the record, arbitrary and capricious.[2]

First, the Commission as well as Media General and the other broadcasters who filed comments on this issue do not dispute that the Spectrum Act gave the Commission authority, following the Act's passage, to grant the small number of pending

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[1] *See* 79 Fed Reg 48,442 (August 15, 2014).

[2] The Commission's discussion of this particular issue appears at ¶¶ 227-231 of the lengthy *Report and Order*.

VHF-to-UHF allocation petitions.[3] The dispute concerns the extent to which the Congressional directive is mandatory or permissive, with the Commission contending it is permissive. Even if the Commission's determination that it has some discretion in this area is correct, the record nonetheless makes clear that Congress intended that the FCC move forward with the petitions and recognized that doing so is in the public interest.[4]

The Commission contends that processing the few isolated petitions would constrain the repacking process and limit the agency's flexibility.[5] Congress, however, authorized repacking to allow a rationalization of post-auction channels, not as a secondary means of extracting additional spectrum from television stations[6] or of interfering with rights that had been established when the FCC "froze" the filing of such petitions on May 31, 2011.[7] As explained at length in Media General's Comments, the legislative language regarding these petitions was a key addition to the Spectrum Act in conference; it was included to make clear that Congress wanted the FCC to move forward on the pre-freeze petitions. The FCC had already committed to doing so eight months earlier when it imposed the "freeze" and processed a number of other VHF stations in the months before and after adoption of the Spectrum Act. So few petitions remain at this

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[3] *Report and Order*, ¶ 227; Comments of Media General, filed Jan. 25, 2013, at 3-6; Comments of Bonten Media Group, Inc., filed Jan. 25, 2013, at 6-7; Comments of Raycom Media, Inc., filed Jan. 25, 2013, at 4.

[4] Media General Comments at 5-6.

[5] *Report and Order* at ¶ 228.

[6] Comments of NAB, filed Jan. 25, 2013, at 8.

[7] For the FCC's "freeze" notice, *see* FCC Public Notice, "Freeze on the Filing of Petitions for Digital Channel Substitutions Effective Immediately," DA-11-959, released May 31, 2011.

point that processing them will not open any floodgates or have any significant effect on the repack.[8]

Second, Congress gave the FCC the authority to process these petitions because it recognized, as the record makes clear, that such action would advance the public interest for a number of reasons. Processing the petitions will help replicate pre-DTV transition coverage and remedy service losses viewers have experienced as part of the digital transition. It will ensure availability of mobile over-the-air television. The prospect of future repacking – which, frankly, will not be disadvantaged by grant of these isolated petitions – should not be used as justification for denying viewers relief for service losses that have persisted since the DTV transition or for limiting their access to mobile over-the-air television.

Finally, not only is the FCC's decision contrary to effecting Congressional intent and advancing the public interest, it raises serious procedural concerns. The "freeze" public notice that the FCC issued on May 31, 2011 was perfectly clear: "The Media Bureau will continue its processing of rulemaking petitions that are already on file with the Office of the Secretary."[9] The FCC's determination now to refrain from processing the few pending pre-"freeze" petitions amounts to an imposition of a retroactive "freeze"

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[8] Neither would this small number of pending petitions have any significant effect on the success of the auction itself. Media General is on record as being willing to accept a condition that would prohibit it from "bidding in" any new UHF allocation in exchange for a VHF channel. *Ex Parte* Report of Media General, filed May 7, 2014, in MB Docket No. 12-268. Contrary to the *Report and Order*, ¶ 228 n. 707, such a commitment would not be negated by statutory terms regarding eligibility for bidding.

[9] *Id.*

without any notice.[10] This determination inequitably treats petitioners with remaining VHF-to-UHF pre-"freeze" requests differently from other similarly situated VHF-to-UHF channel proponents whose pre-"freeze" petitions resulted in the issuance of notices of proposed rulemaking and, in some cases, grants after May 31, 2011.[11] The FCC's latest decision is contrary to the well-established requirement that the FCC treat similarly situated parties the same.[12]

In short, the FCC should reconsider and reverse its determination not to process the very few remaining VHF-to-UHF allocation petitions. That action is consistent with Congressional intent, advancement of the public interest, and legal and equitable concerns. Congress unequivocally supported processing these petitions, the viewers in Media General's service areas deserve it, and failure to do so would be arbitrary and capricious. To allow Media General to remedy service problems persisting from the

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[10] Media General Comments at 9-10; NAB Comments at 31-32.

[11] *See, e.g.*, notices of proposed rulemaking issued post-freeze in MB Docket Nos. 11-159, 11-140, and 11-139, and post-freeze decisions approving VHF-to-UHF changes in MB Docket Nos. 11-140, 11-100, and 11-74. The FCC has insufficiently distinguished the still pending VHF-to-UHF petitions from those in these dockets.

[12] *Melody Music v. FCC*, 345 F.2d 730, 7332 (DC Cir. 1965).

digital transition and bring its viewers mobile broadcast service, the Commission should reconsider and process Media General's VHF-to-UHF allocation petitions.

Respectfully submitted,

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